

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

MARYAM ASLANI,

Plaintiff,

v.

RENEE McCARTHY,

Defendant.

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Case No. 16 C 10476

MEMORANDUM ORDER

On June 21, 2017 this Court issued its very brief memorandum order -- an order based on its review of the supporting memorandum filed by defendant Renee McCarthy ("McCarthy") to be dismissed from the Amended Complaint filed by counsel for plaintiff Maryam Aslani ("Aslani") against McCarthy and several other governmental defendants -- that modified this Court's June 20 memorandum order that had directed Aslani to respond to McCarthy's motion for her dismissal. That second memorandum order called for an accelerated response to one of the grounds advanced in McCarthy's motion: a contention asserting absolute immunity from suit based on the Eleventh Amendment, on the premise that she was a state employee acting within the scope of her duties as such. On the same June 21 date Aslani's counsel J. Nicolas Albukerk ("Albukerk") filed a motion to withdraw as Aslani's counsel.

After this memorandum order had been dictated, transcribed and edited and was ready for issuance, this Court received from its courtroom deputy via e-mail a letter from Aslani complaining about her problems with Albukerk about his fees. That is not of course a subject to be addressed by this Court. It simply grants Albukerk's motion for leave to withdraw, for it

consistently views such motions (whether by a lawyer seeking withdrawal or by a client seeking to discharge a lawyer designated to represent that client under this District Court's trial bar program for pro se plaintiffs) as the equivalent of no-fault divorce. As for Aslani, she is ordered to obtain new counsel or to decide to represent herself pro se on or before August 2, 2017, and a status hearing is set for 9 a.m. on that date.

Meanwhile this Court has learned that Albukerk had filed a response to McCarthy's motion on the Eleventh Amendment issue on June 28 (Dkt. No. 36), even though -- as stated earlier -- Albukerk had filed his motion to withdraw a week earlier. As Albukerk would have it, the Complaint's pejorative charges that McCarthy had acted in excess of her authority placed her outside of the protective mantle of Eleventh Amendment immunity.

But McCarthy's reply to that response (Dkt. No. 40) has torpedoed that argument, both because Aslani's own Amended Complaint ¶ 43 (drafted by Albukerk) and Illinois caselaw confirm that McCarthy was acting within the scope of her employment, so that she is shielded by Eleventh Amendment immunity. Hence her motion to be dismissed as a defendant is granted.



Milton I. Shadur
Senior United States District Judge

Date: July 6, 2017
Nunc Pro Tunc June 28, 2017